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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,660	05/05/2005	Youichi Arai	271812US0PCT	1371
22850	7590	10/31/2007	EXAMINER	
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.			PAGONAKIS, ANNA	
1940 DUKE STREET			ART UNIT	PAPER NUMBER
ALEXANDRIA, VA 22314			4173	
			NOTIFICATION DATE	DELIVERY MODE
			10/31/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/533,660

Applicant(s)

ARAI ET AL.

Examiner

Anna Pagonakis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-24 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Per telephone conversation with Paul Killos (see attached Interview Summary), the Restriction Requirement mailed 08/23/2007 is hereby vacated and replaced with the Restriction Requirement and Election of Species Requirement detailed below.

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims shall be restricted.

Lack of Unity – Nine Groups of Claims

Group I, claims 1-2, drawn to blood fluidity improving agent comprising chlorogenic acids, caffeic acids and ferulic acids.

Group II, claims 3-4, drawn to a blood circulation promoter comprising chlorogenic acids, caffeic acids and ferulic acids.

Group III, claims 5-6, drawn to a body-coldness improving agent comprising chlorogenic acids, caffeic acids and ferulic acids.

Group IV, claims 7-8, drawn to a cerebrovascular disease improving agent comprising chlorogenic, caffeic acids and ferulic acids.

Group V, claims 9-16, drawn to use of chlorogenic acids, caffeic acids and ferulic acids for the manufacture of a blood fluidity-improving agents.

Group VI, claims 17-18, drawn to a method of improving the blood fluidity comprising administering an effective dose consisting of chlorogenic acids and caffeic acids.

Group VII, claims 19-20, drawn to a method of promoting blood circulation, comprising administering an effective dose consisting of chlorogenic acids and caffeic acids.

Group VIII, claims 21-22, drawn to a method of improving the cerebrovascular disease, comprising administering an effective dose of chlorogenic acids and caffeic acids.

Group IX, claims 23-24, drawn to a method of improving the cerebrovascular disease, comprising administering an effective dose of chlorogenic acids and caffeic acids.

The inventions listed as Groups I-IX, do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical feature for the reasons stated in the restriction requirement. In addition, a method of treatment and use of chlorogenic, caffeic and ferulic acids is not novel (See US PGPub 2005/0113333). Therefore, a holding of lack of unity amongst the inventions of Group I-IX is proper.

Applicant is advised that the reply to be complete must include (i) an election of a species or invention to be examined even though the requirement is traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

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The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election with traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Election of Specie Requirement is required regardless of Group of claims elected.

Election

This application contains claims directed to more than one species of the generic invention. In addition to the election of Group I-IX above, the following specie election is required. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Specifically, applicant is required to elect one specie of acids.

Election/Restrictions Proper

MPEP 809.02(d) states “[w]here only generic claims are presented, no restriction can be required except in those applications where the generic claims recite such multiplicity of species

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that an unduly extensive and burdensome search is necessary.” Here, the claims recite such a multiplicity of species that an unduly extensive search would be necessary if all the claimed species were to be examined simultaneously.

The inventions above are patentably distinct. The search for each of the above inventions is not co-extensive particularly with regard to the literature search. Burden consists not only of specific searching of classes and subclasses, but also of searching multiple databases for foreign references and literature searches. Burden also resides in the examination of independent claim sets for clarity, enablement and double patenting issues. Further, a reference that would anticipate the invention of one group would not necessarily anticipate or even make obvious the other group. Finally, the consideration for patentability is different in each case. Thus, it would be undue burden to examine all of the above inventions in one application and the restriction for examination purposes as indicated above is deemed proper.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Inventorship Notice

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

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application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Transition Notice

Effective November 1, 2007, if applicant wishes to present more than 5 independent claims or more than 25 total claims in an application, applicant will be required to file an examination support document (ESD) in compliance with 37 CFR 1.265 before the first Office action on the merits (hereafter "5/25 claim threshold"). See *Changes to Practice for Continued Examination Filings, Patent Applications Containing Patentably Indistinct Claims, and Examination of Claims in Patent Applications*, 72 Fed. Reg. 46715 (Aug. 21, 2007), 1322 Off. Gaz. Pat. Office 76 (Sept. 11, 2007) (final rule). The changes to 37 CFR 1.75(b) apply to any pending applications in which a first Office action on the merits (FAOM) has not been mailed before November 1, 2007. Withdrawn claims will not be taken into account in determining whether an application exceeds the 5/25 claim threshold. For more information on the final rule, please see <http://www.uspto.gov/web/offices/pac/dapp/opla/presentation/clmcontfinalrule.html>.

In response to the restriction requirement set forth in this Office action, applicant is required to file an election responsive to the restriction requirement. Applicant may not file a suggested restriction requirement (SRR) in lieu of an election responsive to the restriction requirement as a reply. A SRR alone will not be considered a *bona-fide* reply to this Office action.

If applicant elects an invention that is drawn to no more than 5 independent claims and no more than 25 total claims, applicant will not be required to file an ESD in compliance with 37 CFR 1.265 that covers each of the elected claims. If the elected invention is drawn to more than 5 independent claims or more than 25 total claims, applicant may file an amendment canceling a number of elected claims so that the elected invention would be drawn to no more than 5 independent claims and no more than 25 total claims.

If the restriction requirement is mailed on or after November 1, 2007, applicant is also required to file an ESD in compliance with 37 CFR 1.265 that covers each of the elected claims, unless the elected invention is drawn to no more than 5 independent claims and no more than 25 total claims taking into account any amendment to the claims. To avoid the abandonment of the application, the ESD (if required) and the election must be filed within **TWO MONTHS** from the mailing date of this Office action. The two-month time period for reply is extendable under 37 CFR 1.136.

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If the restriction requirement is mailed before November 1, 2007, the election must be filed within **ONE MONTH** or THIRTY DAYS, whichever is longer, from the mailing date of this Office action. The time period for reply is extendable under 37 CFR 1.136. Furthermore, if the elected invention is drawn to more than 5 independent claims or more than 25 total claims taking into account any amendment to the claims, the Office will notify applicant and provide a time period in which applicant is required to file an ESD in compliance with 37 CFR 1.265 covering each of the elected claims or amend the application to contain no more than 5 independent elected claims and no more than 25 total elected claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anna Pagonakis whose telephone number is 571-270-3505. The examiner can normally be reached on Monday thru Thursday, 9am to 5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AP

 10/15/07
ARDIN H. MARSCHEL
SUPERVISORY PATENT EXAMINER